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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of CAREY BACA and  
SHERRI MYERS-BACA.

CAREY M. BACA,

Appellant,

v.

SHERRI MYERS-BACA,

Appellant;

STEVEN R. CALLAHAN et al.,

Intervenors and Respondents.

G042287

(Super. Ct. No. 08D001720)

O P I N I O N

Appeals from an order of the Superior Court of Orange County, Nancy A. Pollard, Judge. Appeals dismissed.

Carey M. Baca, in pro. per., for Appellant Carey M. Baca.

Sherri Myers-Baca, in pro. per., for Appellant Sherri Myers-Baca.

Johnson & Johnson, Michael W. Johnson and Amber L. Condon for  
Intervenors and Respondents.

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Carey Baca, husband, and Sherri Myers-Baca, wife, are involved in marital dissolution proceedings. Steven and Lisa Callahan apparently intervened in the proceedings because Myers-Baca had recorded a lis pendens against certain Arizona real property in which they claim an interest. The court granted the Callahans' motion to expunge the lis pendens. Baca and Myers-Baca each purport to appeal from the order granting the Callahans leave to intervene and the order granting the motion to expunge lis pendens. However, the order on the motion for leave to intervene is not before this court. Furthermore, both an order granting a motion for leave to intervene and an order granting a motion to expunge a lis pendens are nonappealable orders. We dismiss the appeals.

## I

### FACTS

#### *A. Introduction:*

At the outset, we must remark upon the record on appeal. It consists of a miniscule clerk's transcript, plus reporters' transcripts of proceedings on April 10, 2009 and June 26, 2009. The clerk's transcript contains a minute order dated June 26, 2009, Baca's notice of appeal from the June 26, 2009 order, Baca's designation of record on appeal, Myers-Baca's notice of appeal from the June 26, 2009 order, and Myer-Baca's designation of record on appeal. That's it. Because most of the facts the parties offer are not contained in the record on appeal, we will describe the background setting based on the representations of the parties, as contained in their briefs.

As a separate matter, we observe that Myers-Baca has filed two other appeals arising out of the underlying dissolution proceedings. On August 10, 2010, we issued an order concerning our intention to take judicial notice of this court's files in *In re Marriage of Carey Baca and Sherri Myers-Baca* (Oct. 13, 2009, G042169) [dismissed] and *In re Marriage of Carey Baca and Sherri Myers-Baca* (Apr. 20, 2010, G042993) [dismissed]. (Evid. Code, §§ 452, subd. (d), 459.) We now take judicial notice of those files.

On an additional point, we note that Baca, on the last business day before oral argument, filed a request for dismissal. The proof of service reflects that, on that same date, he had copies of the request mailed to the other parties.

*B. Background:*

The following representations are taken from the opening briefs of Baca and Myers-Baca. Baca filed a petition for dissolution of marriage in February 2008. A couple of days later, Myers-Baca recorded a lis pendens against certain real property located in Arizona, claiming a community property interest therein. The Callahans filed a motion for leave to intervene in the dissolution proceedings, inasmuch as they also claimed an interest in the Arizona real property. On April 10, 2009, the court granted the motion for leave to intervene. On June 10, 2009, the court denied Sherri's motion for reconsideration and to vacate the order granting the motion for leave to intervene. As the record in *In re Marriage of Carey Baca and Sherri Myers-Baca* (Oct. 13, 2009, G042169) [dismissed] reflects, on June 11, 2009, Myers-Baca filed a notice of appeal from the June 10, 2009 order (the First Appeal).

The parties agree that in May 2009, the Callahans filed a motion to expunge lis pendens and that the court granted the motion on June 26, 2009. Later, on October 13, 2009, the First Appeal, as the record therein reflects, was dismissed for failure to file an opening brief.

The notices of appeal filed by Baca and Myers-Baca in the matter before us (the Second Appeal) state that the appeals were taken from the order of June 26, 2009. The civil case information statements state that the order appealed from was entered on June 26, 2009. They also indicate that "a motion for new trial, judgment notwithstanding the verdict, reconsideration, or to vacate the judgment [was] made and denied[.]" However, Baca and Myers-Baca did not complete the portions of the forms requiring that

they specify the type of motion, the date it was filed, the date it was denied, or the date the denial was served.

In their opening briefs, Baca and Myers-Baca claim to appeal from both the order granting the motion for leave to intervene and the order granting the motion to expunge.

## II

### DISCUSSION

#### *A. Order Granting Motion for Leave to Intervene:*

The April 10, 2009 reporter's transcript reflects that, on that morning, a hearing was held on the motion for leave to intervene. Baca and Myers-Baca appeared, but the Callahans did not. The tentative was to grant the motion, but the matter was put off calendar because the Callahans did not appear. Apparently, counsel for the Callahans appeared later that morning, after the matter had been put off calendar. The court granted the motion for leave to intervene because the motion appeared meritorious and Baca and Myers-Baca had filed no formal written opposition to the Callahans' motion.

Baca and Myers-Baca argue that the court erred, on a variety of procedural grounds, in granting the motion for leave to intervene. However, that order is not the subject of this appeal. Baca and Myers-Baca have taken appeals from the order entered June 26, 2009, and that order did not address the motion for leave to intervene. It would appear that, in the First Appeal, Myers-Baca had attempted to appeal from the June 10, 2009 order denying her request to vacate the order granting leave to intervene. However, the First Appeal was dismissed.

Even were an appeal from the order granting the motion for leave to intervene before us, we would note that an order granting a motion for leave to intervene is not an appealable order. (*Adoption of Lenn E.* (1986) 182 Cal.App.3d 210, 217.) Furthermore, even were we to construe the orders with respect to the Callahans to be final, severable, appealable judgments as to them, we would hold that Baca and Myers-

Baca had not demonstrated that the court erred in granting leave to intervene. It is the burden of the appellants to demonstrate reversible error and to cite legal authority in support of their position. (*Virtanen v. O’Connell* (2006) 140 Cal.App.4th 688, 710; *Roden v. AmerisourceBergen Corp.* (2007) 155 Cal.App.4th 1548, 1575-1576.) Here, neither Baca nor Myers-Baca cited any legal authority in his or her respective opening brief. In their reply briefs, they each cited *Troxel v. Granville* (2000) 530 U.S. 57 and *Moore v. City of East Cleveland, Ohio* (1977) 431 U.S. 494. Neither of those cases is apposite. Consequently, even were we to consider the order granting leave to intervene, we would hold that Baca and Myers-Baca had not met their burden to show reversible error.

*B. Order Granting Motion to Expunge Lis Pendens:*

The June 26, 2009 minute order states in pertinent part: “Motion to expunge lis pendens and compel . . . withdrawal of 2nd lis pendens on grounds that the claim on which the notice is based does not contain a real property claim, any real property claim in this action lacks . . . probable validity, and the lis pendens is void for failure to comply with service requirements[.] [¶] Court orders the respondent to withdraw the lis pendens.” (Capitalization omitted.)

In their opening briefs, Baca and Myers-Baca argue, without citation to legal authority, that the court erred in granting the motion to expunge because Myers-Baca was claiming a community property interest in the Arizona real property. The Callahans, on the other hand, state that an order granting a motion to expunge is nonappealable. The Callahans are correct. (Code Civ. Proc., §§ 405.39, 904.1; *Woodridge Escondido Property Owners Assn. v. Nielsen* (2005) 130 Cal.App.4th 559, 577.) “Thus, this court has no authority to review on appeal . . . the court’s . . . order granting [the Callahans’] motion to expunge the lis pendens . . .” (*Woodridge Escondido Property Owners Assn. v. Nielsen, supra*, 130 Cal.App.4th at p. 577.)

*C. Motion to Strike:*

In the conclusions to their reply briefs, Baca and Myers-Baca move to strike the Callahans' respondents' brief. This motion is not in proper form. Baca and Myers-Baca have failed to comply with California Rules of Court, rule 8.54, which requires the filing and service of a separate motion, accompanied by a memorandum. Consequently, we do not consider their request. (*Thompson v. Boyd* (1963) 217 Cal.App.2d 365, 387; cf. *Kinney v. Overton* (2007) 153 Cal.App.4th 482, 497, fn. 7.)

III

DISPOSITION

The appeals are dismissed as taken from nonappealable orders. The Callahans shall recover their costs on appeal.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

O'LEARY, J.